MT LEGISLATIVE HISTORY

Chapter 444 1977

Bill H 585 S _____ Original bill & hist. ✓C

H. Committee on Judiciary

Hearing Date(s) Feb 04 ✓C
Feb 09 ✓C
_____ ___C
_____ ___C

Date Out Feb 09 ✓C

S. Committee on Public Health, Welfare & Safety

Hearing Date(s) Mar 23 ✓C
Mar 25 ✓C
_____ ___C
_____ ___C

Date Out Mar 25 ✓C

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

JUDICIARY COMMITTEE

45th Legislature

Bill No.	Subject Matter	Date In	Sponsor	Hearing Date	Committee Action	Date Out
HB 567	to submit to the electors of Mont. an amendment constitution, to remove supreme court jurisdiction over admission to the bar.	1-27	Huennekens	Thursday 3rd	do not pass	2-9
SB 30	to revise and clarify the laws relating to criminal procedure	1-28	Hazelbaker	March 4th	be concurred in	3-7
SB 40	removing & clarifying statutory references to sovereign or governmental immunity to coordinate	1-28	Towe	March 8	amended and concurred in	3-10
HJR 43	urging repeal of the federal water pollution control act	1-28	Fabrega	Thursday 3rd 7 p.m.	"WATER" do pass	2-11
HB 585	amending the definition of pollution, authorizing the bd of health & environmental sciences to change a stream classification, etc.	1-28	Vincent	Friday 4th	do pass	2-9
HB 589	to give justice, municipal & city courts, traffic violations, fish & game etc. and jurisdiction over the youth court	1-28	Williams	Thursday 3rd	do pass as amended	2-9

H BILL NO. 585

INTRODUCED BY Vincent

BY REQUEST OF

THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING TITLE 69, CHAPTER 48; AMENDING THE DEFINITION OF POLLUTION; AUTHORIZING THE BOARD OF HEALTH AND ENVIRONMENTAL SCIENCES TO CHANGE A STREAM CLASSIFICATION WHEN A STREAM HAS BEEN IMPROPERLY CLASSIFIED; AUTHORIZING THE SERVICE OF COMPLIANCE ORDERS BY MAIL; AND AMENDING SECTIONS 69-4802, 69-4806, 69-4808.2, 69-4809.1, AND 69-4820.1, R.C.M. 1947."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 69-4802, R.C.M. 1947, is amended to read as follows:

"69-4802. Definitions. Unless the context requires otherwise in this chapter the following definitions apply:

(1) "Sewage" means water-carried waste products from residences, public buildings, institutions, or other buildings including discharge from human beings or animals together with ground water infiltration and surface water present.

(2) "Industrial waste" means any waste substance from the process of business or industry, or from the development of any natural resource together with any sewage that may be present.

(3) "Other wastes" means garbage, municipal refuse, decayed wood, sawdust, shavings, bark, lime, sand, ashes, offal, night soil, oil, grease, tar, heat, chemicals, dead animals, sediment, wrecked or discarded equipment, radioactive materials, solid waste, and all other substances that may pollute state waters.

(4) "Contamination" means impairment of the quality of state waters by sewage, industrial wastes, or other wastes creating a hazard to human health.

(5) "Pollution" means contamination, or other alteration of the physical, chemical, or biological properties of any state waters, which exceeds that permitted by Montana water quality standards, including, but not limited to, standards relating to change in temperature, taste, color, turbidity, or odor; or the discharge or introduction of any liquid, gaseous, solid, radioactive, or other substance into any state water which will or is likely to create a nuisance or render the waters harmful, detrimental, or injurious to public health, recreation, safety, welfare, livestock, wild animals, birds, fish, or other wildlife. A discharge which is authorized under the pollution discharge permit rules of the board is not "pollution" under this chapter.

(6) "Sewerage system" means a device for collecting or conducting sewage, industrial wastes, or other wastes to an ultimate disposal point;

(7) "Treatment works" means works installed for treating or holding sewage, industrial wastes, or other wastes;

(8) "Disposal system" means a system for disposing of sewage, industrial, or other wastes, and includes sewerage systems and treatment works;

(9) "State waters" means any body of water, irrigation system, or drainage system either surface or underground; however, this subsection does not apply to irrigation waters where the waters are used up within the irrigation system and the waters are not returned to any other state waters;

(10) "Person" means the state, a political subdivision of the state, institution, firm, corporation, partnership, individual, or other entity;

(11) "Council" means the state water pollution control advisory council provided for in section 82A-607;

(12) "Board" means the board of health and environmental sciences, provided for in section 82A-605;

(13) "Department" means the department of health and environmental sciences, provided for in Title 82A, chapter 6;

(14) "Local department of health" means the staff,

including health officers, employed by a county, city, city-county, or district board of health;

(15) "Point source" means any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or vessel or other floating craft, from which pollutants are or may be discharged;

(16) "Owner or operator" means any person who owns, leases, operates, controls or supervises a point source;

(17) "Standard of performance" means a standard adopted by the board for the control of the discharge of pollutants which reflects the greatest degree of effluent reduction achievable through application of the best available demonstrated control technology, processes, operating methods, or other alternatives, including, where practicable, a standard permitting no discharge of pollutants;

(18) "Effluent standard" means any restriction or prohibition on quantities, rates and concentrations of chemical, physical, biological and other constitutents which are discharged into state waters."

Section 2. Section 69-4806, R.C.M. 1947, is amended to read as follows:

"69-4806. Pollution unlawful -- permits. It is unlawful to:

(1) cause pollution as defined in section 69-4802 (5), R.C.M. 1947, of any state waters or to place or cause to be placed any wastes in a location where they are likely to cause pollution of any state waters;

(2) carry on any of the following activities without a current permit from the department:

(a) construct, modify, or operate a disposal system which discharges ~~to~~ into any state waters; ~~or~~

(b) construct or use any outlet for the discharge of sewage, industrial wastes, or other wastes ~~to~~ into any state waters; or

(c) discharge sewage, industrial wastes, or other wastes into any state waters; ~~or~~

(3) ~~violate any limitation imposed by a current permit.~~ violate any provision set forth in a permit or stipulation, including but not limited to limitations and conditions contained therein;

(4) violate any order issued pursuant to this chapter; or

(5) violate any provision of this chapter."

Section 3. Section 69-4808.2, R.C.M. 1947, is amended to read as follows:

"69-4808.2. Duties of board. (1) The board shall:

(a) Establish and modify the classification of all waters in accordance with their present and future most

beneficial uses.

(b) Formulate standards of water purity and classification of water according to its most beneficial uses, giving consideration to the economics of waste treatment and prevention.

(c) Review from time to time, at intervals of not more than three (3) years, established classifications of waters and standards of water purity and classification, ~~and~~ as follows:

~~(i) The classifications, standards, and rules which have been adopted by the state water pollution control council under section 69-4813 are, without necessity of a hearing, initially adopted by the board.~~

~~(ii)~~(i) In revising classifications or standards or in adopting new classifications or standards the board may not so formulate standards of water purity or classify any state water as to lower any water quality standard applicable to any state water below the level applicable under the classifications and standards adopted ~~by the state water pollution control council under section 69-4813~~ except upon a finding that a particular state water has been classified under a standard or classification of water quality that is higher than the actual water quality that existed at the time of classification and only if the action is taken pursuant to 69-4814.

~~(iii)~~(ii) The board shall require that any state waters, whose existing quality is higher than the established water quality standards, be maintained at that high quality unless it has been affirmatively demonstrated to the board that a change is justifiable as a result of necessary economic or social development and will not preclude present and anticipated use of these waters; and

~~(iv)~~(iii) The board shall require any industrial, public, or private project or development, which would constitute a new source of pollution or an increased source of pollution to high quality waters, referred to in subsection (1)(c)~~(iii)~~(ii), to provide the degree of waste treatment necessary to maintain that existing high water quality.

~~(d) Advise, consult, and co-operate with other states, other state and federal agencies, affected groups, political subdivisions, and industries in the formulation of a comprehensive plan to prevent and control pollution.~~

~~(e)~~(d) Adopt rules governing application for permits to discharge sewage, industrial wastes, or other wastes into state waters including rules requiring the filing of plans and specifications relating to the construction, modification, or operation of disposal systems.

~~(f)~~(e) Adopt rules governing the issuance, denial, modification, or revocation of permits~~, and~~ as follows:

(i) The rules shall allow the issuance or continuance of a permit only if the department finds that operation consistent with the limitations of the permit will not result in pollution of any state waters, except that:

(ii) The rules may allow the issuance of a temporary permit under which pollution may result, if the department insures that such permit contains a compliance schedule designed to meet all applicable effluent standards and water quality standards in the shortest reasonable period of time.

(iii) The rules shall provide that the department may revoke a permit if the department finds that the holder of the permit has violated its terms, unless the department also finds that the violation was accidental and unforeseeable and that the holder of the permit corrected the condition resulting in the violation as soon as was reasonably possible; and

~~(g)~~(f) Hold hearings necessary for the proper administration of this chapter or, in the case of permit issuance hearings, delegate this function to the department.

~~(h)~~(g) Adopt rules for the administration of this chapter.

~~(i)~~(h) Adopt pretreatment standards for waste-water discharged into a municipal disposal system, adopt effluent standards as defined in section 69-4802 (18), adopt toxic effluent standards and prohibitions, and establish standards

of performance for new point source discharges.

(2) The board may:

(a) accept loans and grants from the federal government and other sources to carry out the provisions of this chapter; and

(b) establish minimum requirements for the treatment of wastes."

Section 4. Section 69-4809.1, R.C.M. 1947, is amended to read as follows:

"69-4809.1. Duties of department. (1) The department shall:

(a) Issue, suspend, revoke, modify, or deny permits to discharge sewage, industrial wastes, or other wastes ~~to~~ into state waters, consistently with rules made by the board;

(b) Examine plans and other information needed to determine whether a permit should be issued or suggest changes in plans as a condition to the issuance of a permit;

(c) Clearly specify in any permit any limitations imposed as to the volume, strength, and other significant characteristics of the waste to be discharged;

(d) Collect and furnish information relating to the prevention and control of water pollution;

(e) Conduct or encourage necessary research and demonstrations concerning water pollution;

(f) Issue orders to any person to clean up any

material which he or his employee, agent, or subcontractor has accidentally or purposely dumped, spilled, or otherwise deposited in or near state waters and which may pollute them~~;~~.

(g) Take such actions as are authorized or required under section 69-4820.1 to insure that the terms and conditions of issued permits are complied with and to insure that violations of this chapter are appropriately prosecuted~~;~~. and

(h) Advise, consult, and cooperate with other states, other state and federal agencies, affected groups, political subdivisions, and industries in the formulation of a comprehensive plan to prevent and control pollution.

(2) The department may accept loans and grants from the federal government and other sources to carry out the provisions of this chapter."

Section 5. Section 69-4820.1, R.C.M. 1947, is amended to read as follows:

"69-4820.1. Additional enforcement remedies. (1) In addition to all other remedies created by this act, the department is authorized to take appropriate enforcement action on its own initiative to:

(a) prevent, abate, and control the pollution of state waters;

(b) prevent, abate, and control any violation of a

condition or limitation imposed by a permit issued under section 69-4806, R.C.M. 1947; or

(c) prevent, abate, and control any violations of regulations relating to pretreatment standards.

(2) In furtherance of subsection (1) of this section, any person violating any condition, limitation, standard or other requirement established pursuant to this chapter may be served with a compliance order issued by the department. Such order must specify the condition, limitation, standard or other requirement violated and must set a time for compliance. However, in establishing a time for compliance, the department shall take into account the seriousness of the violation and any good faith efforts that have been made to comply with the condition, limitation, standard or other requirement that has been violated. The compliance order issued under this section shall be either personally served ~~by an authorized representative of the department~~ by a person qualified to perform service under the Montana rules of civil procedure or by certified mail.

(3) The department is authorized to commence a civil action seeking appropriate relief, including a permanent or temporary injunction, for any violation which would be subject to a compliance order under subsection (2) of this section. Any action under this subsection may be commenced in the district court of any county in which the defendant

is located or resides or is doing business, and the court shall have jurisdiction to restrain such violation and to require compliance.

(4) Any person found to be in violation of a condition, limitation, standard or other requirement established pursuant to this section shall be subject to the penalty provisions of section 69-4823, R.C.M. 1947.

(5) For the purpose of this subsection, the term "person" shall mean, in addition to the definition contained in section 69-4802, R.C.M. 1947, any responsible corporate officer."

-End-

REPRESENTATIVE COURTNEY:
How many days do you actually spend?

MR. BURGESS:
About 1 week out of a month, actually.

The discussion ended on House Bill 464.

HOUSE BILL 585:

REPRESENTATIVE VINCENT, DISTRICT #78:
Mr. Vincent introduced Steve Brown, chief counsel of the DNR.

STEVE BROWN:
In the definition of pollution on page 2, on line 18 I request that you insert the word "introduction". The question came up that without the word someone may challenge. On page 5, what constitutes an illegal act. On page 6, Colstrip 3 and 4, Armella Creek was given the same stream classification as the Yellowstone River. Most of the data relates to the main channels and they were given the same classification, if a smaller intersecting stream. In Colstrip, the stream presented a real legal dilemma. If the stream had been properly classified it would not have been polluted. I would suggest amendments on page 7 and 10, advisory and consultation duties, and on page 11, rules of civil procedure. (copy attached)

DON WILLIAMS, WATER QUALITY:
I am concerned with amendments, page 6. We have picked up added water quality information, primarily in the Yellowstone. In 1967 on water - revision of classification of streams on water quality standards. In 1976 there were major revisions. There are other streams that may exceed the water quality standards, Pumpkin Creek and Powder River. (position paper attached)

There were no opponents.

REPRESENTATIVE VINCENT:
I think it would clarify current law and it would help the legislature serve the public health.

REPRESENTATIVE KEYSER asked about page 2.

MR. BROWN:
We are not concerned with non-point source regulation.

REPRESENTATIVE BAETH asked about Libby Dam.

MR. WILLIAMS:
That is covered by federal law, anything after 1971, an existing dam is exempt.

REPRESENTATIVE ROTH:
On page 6, what is state water.

MR. BROWN referred her to page 3, line 10 of the definition. These streams will be done as they get into an area.

It was asked about the potential impact on Cabin Creek in the North Fork area, and Mr. Brown said, in some cases it may mean lowering and in some raising the classification. They will do all of the streams in an area. We are getting additional federal money for the statewide 208 program. There are 4 designated areas doing their own water quality management planning, and the area in the Flathead is one of them.

2.2 million; 60,000 EPA ; state match with 25% to federal 75%.

REPRESENTATIVE SCULLY:
Does the department now have the ability to levy a fine.

MR. BROWN:
No, we have to file a court action.

REPRESENTATIVE CONROY:
Apparently this is designed to take care of industrial sitings. Have you done any work on farms, such as for saline seep?

MR. WILLIAMS:
Only on state lands, I question that we have any regulatory control.

No further questions, the hearing closed on HB 585.

THE HEARING OPENED ON HOUSE BILL #462.

REPRESENTATIVE MELOY, DISTRICT #29:
This is the identical bill with the amendments that went through the House and was killed in the Senate. The constitution requires the legislature to provide a code of ethics. It establishes a set of standards that all public officials must conform to.

He went through the bill, step by step, and explained it. He commented that there are separate standards for separate types of individuals.

REPRESENTATIVE VINCENT, DISTRICT #78:
The holding of public office or employment is a public trust, and I think the passage of this legislation would do a lot to preserve that confidence. Article 2, section 4 of the constitution states we have an obligation to do this.

HOUSE BILL ~~430~~ 785

The primary purpose of the Department's request for amending the state's Water Pollution Control Act is to correct an existing inadequacy in the law. The law was first enacted in 1955. Substantial changes were made in the law in 1971, primarily to strengthen the act from the enforcement standpoint. Additional amendments were made in 1973, mainly to alow the Department to comply with PL 92-500 (Federal Water Pollution Control Act Amendments of 1972), so they could administer a federal waste discharge permit program. The present inadequacy relates to the 1971 amendments and a paragraph which was added to the law which prevents the Board of Health and Environmental Sciences from lowering Water Quality Standards or ~~changing~~ stream classifications. The Department has found several examples of streams that were initially misclassified and that, therefore, should be properly classified. The Department representatives will give examples of specific streams where reclassifications are needed. I would like to point out that any changes made to classifications and standards must follow Montana Administrative procedures and any changes will provide for adequate public participation.

Other changes are proposed. These are considered minor and attempt to clarify present language in the law, improve administrative procedures, and transfer some duties which are presently shown as given to the Board to the Department where these can be more appropriately handled by the Department. These, too, will be discussed by Department personnel.

COMMENTS TO PROPOSED WATER POLLUTION CONTROL ACT AMENDMENTS

Amendments to the Montana Water Pollution Control Act are being proposed for the following reasons:

Section 69-4802(5) -

The purpose of the proposed addition to the "pollution" definition is to assure that the Department and Board of Health and Environmental Sciences have the authority to control pollution originating not only from point sources but also from nonpoint sources.

Section 69-4806(3) -

This amendment is proposed to assure that any provision of a permit or stipulation, and not just a limitation imposed by a permit, is enforceable.

Section 69-4806(4) and (5) -

These additional sections assist in clarifying the scope of the Department's enforcement powers.

Section 69-4808.2(1)(c)(i) -

This section is no longer needed since revised standards have since been adopted by the Board of Health and Environmental Sciences.

Section 69-4808.2(1)(c)(ii) -

This proposed amendment corrects the existing law since it is now recognized that some of the initial water-use classifications were incorrect. As an example, many of the small streams in the eastern part of the State were incorrectly given a beneficial use classification indicating suitability for drinking purposes while "natural" conditions make the water unfit for domestic use.

Section 69-4808.2(1)(d) -

The duties enumerated in this section should be duties of the Department of Health and Environmental Sciences and not the Board.

Section 69-4808.2(2)(a) -

The discretionary duties conferred upon the Board in this section should also be duties of the Department.

Section 69-4809.1(1)(h) and Section 69-4809.1(2) -

The duties which were conferred upon the Board under Section 69-4808.2(1)(d) and Section 69-4808.2(2)(a) are transferred to the Department in these sections.

Section 69-4820.1(2) -

As the law presently stands, only Department personnel are permitted to serve compliance orders. This statutory requirement has forced the Department to utilize personnel in ways that do not always maximize a wise utilization of Department time and expense. The proposed amendment provides for service by certified mail and also enables any person qualified to perform service under the Montana Rules of Civil Procedure to serve compliance orders for the Department. The adoption of this amendment would substantially assist the Department in saving time and expense.

The motion then reverted to the original motion of "do not pass". The motion carried with the vote as follows:

Not voting	Yes		No
Conroy	Hand	Kennerly	Baeth
Holmes	Eudaily	Keyser	Colburn
Day	Lory	McLane	Courtney
Dussault	Ramirez	Roth	Teague
	Seifert	Scully	

HOUSE BILL # 585: REPRESENTATIVE LORY made a motion "do pass". The motion carried with Representatives Seifert, Roth, Teague, Keyser and Hand voting "no". Representatives Conroy, Holmes, Day and Dussault were absent.

HOUSE BILL # 589: REPRESENTATIVE McLANE made a motion to amend this bill. A copy of the amendments is attached. The motion to amend carried with the vote unanimous. REPRESENTATIVE EUDAILY made a motion to "do pass as amended". The motion carried with the vote unanimous.

HOUSE BILL # 590: REPRESENTATIVE McLANE made a motion to "do pass". The motion carried with Representatives Roth, Courtney and Keyser voting "no". Representatives Conroy, Holmes, Day and Dussault were absent.

HOUSE BILL # 607: REPRESENTATIVE LORY made a motion to accept the amendments presented by the Highway Patrol. The motion to amend carried with the vote unanimous. REPRESENTATIVE LORY made a motion to "do pass as amended". The motion carried with Representative Seifert voting "no". A copy of the amendments is attached.

HOUSE BILL #633: REPRESENTATIVE HAND made a motion "do pass". The motion carried with the vote unanimous.

HOUSE BILL #634: REPRESENTATIVE LORY made a motion to amend this bill, (a copy of the proposed amendments attached). The motion to amend carried with the vote unanimous. REPRESENTATIBE LORY made a motion "do pass as amended". The motion carried with the vote unanimous.

HOUSE BILL # 642: REPRESENTATIVE McLANE made a motion "do not pass". The motion carried with the vote unanimous.

The meeting adjourned at 11:35 a.m.

John Scully, Chairman

Mary Ellen Connelly, Secretary

45th LEGISLATIVE SESSION

COMMITTEE ON PUBLIC HEALTH, WELFARE AND SAFETY

HOUSE BILL NO.	ENTERED COMM. 1977	DATE CONSIDERED 1977	OUT OF COMM. 1977	DO NOT DATE 1977	DO NOT PASS DATE 1977	DO PASS AS AMEND. DATE 1977	BE CONCURRED IN DATE 1977	BE CONC. IN AS AMENDED DATE 1977	BE NOT CONCURRED IN DATE 1977
418	Feb. 17	----	Mar. 3	(to another Committee via Jean Fallin)					
455	Feb. 25	Mar. 29	Mar. 31				Mar. 31		
480	" 25	" 26	" 28						Mar. 28
487	Mar. 2	" 24	" 25				Mar. 25 (AMENDED--WITHOUT RECOMMENDATION)		
490	Feb. 19	" 17	" 17				Mar. 17		
523	Feb. 25	" 22							
529	Feb. 21	" 17	Mar. 17				Mar. 17		
544	Feb. 25		Mar. 15	(to Judiciary)					
585	Feb. 17	" 22	Mar. 25				Mar. 25 AMENDED		
627	Mar. 25	" 30	Apr. 6				Apr. 6 AMENDED		
658	Mar. 2	" 31	Mar. 31				Mar. 31		
694	Feb. 25 Mar. 25	" 24 -----	Mar. 25 Mar. 28	(error)			Mar. 28 AMENDED		
724	Mar. 2	" 24	Mar. 24				Mar. 24 AMENDED		
730	Mar. 3	" 24	Mar. 25				Mar. 25 (AMENDED--WITHOUT RECOMMENDATION)		
772	Feb. 25	" 12	Mar. 31				Mar. 31 AMENDED		

(Use Separate Sheet for Senate, House Bills, and Resolutions)

CONSIDERATION OF HOUSE BILL 307: Representative Menahan introduced his bill by saying he sponsored it at the request of the Governor.

Bob Lohn from the Governor's staff testified on the bill first. Mr. Lohn said this bill would remove the statutory qualifications for the Director of Health and Environmental Sciences. He said the current statute made the requirements for this position to regid. The present Director has been named the Acting Director because he is unable to meet all the present requirements. The statute would be changed to read: 1) have a degree of doctor of medicine; 2) be a medical doctor who is eligible for examination in the State of Montana.

John McMahon, Montana Medical Association, said they are strongly in support of this bill. Dr. McMahon added he does not think the State would have a problem finding qualified persons under this legislation. (See Exhibit "B")

There were no opponents to this bill.

Senator Olson requested the Committee take no executive action on this bill at this meeting.

That concluded the hearing on HB307.

CONSIDERATION OF HOUSE BILL 585: Representative Vincent sponsored this bill at the request of the Department of Health and Environmental Sciences. He explained the changes his bill would make on the present law.

Mona Jamison, attorney for the Department of Health and Environmental Sciences, further explained the changes they would like (see Exhibit "C").

Don Willems, Department of Health and Environmental Sciences, testified to clarify the intent of the Department concerning the State's classification of lakes and streams. He said they are presently allowed to lower classifications of streams and, also, their intent is not to lower the classification of Flathead Lake. Some streams have been mis-classified (gave an example of a stream that has been classified as safe for drinking when it is not). Any changes in classification are not made until there is a public hearing.

Don L. Allen, Executive Director for the Montana Petroleum Association, testified before the Commitee concerning his industry's concern with the word, "introduction". Their feeling is that this word changes the meaning of the bill and a concern they have centers around the water introduced in drilling. "Introduction" changes meani

Jim Mockler, Montana Coal Council, testified next, also questioning the word, "introduction", in the bill (page 2, line 18).

He said his industry does introduce a new material when they take out the coal.

Peter Jackson of the WETA organization spoke to the Committee concerning the permit portion of the bill - he asked the Committee to look very carefuly at it so there would not be duplication of permits from various agencies.

Representative Vincent, in closing, said he did not think there is a serious problem in the bill - his primary concern is to continue to have Montana a leader in assuring its citizens high quality water. Vincent said the word, "introduction", is qualified by the effect it has.

There were no additional witnesses.

Questions from the Committee delved rather extensively into the worries of the mining and oil industries on this bill. Mr. Willems said they have no problem with the industries; his Department's primary problem is seepage. "Introduction" should be added to line 23, page 2 also. 208 program will control non-point sources. Senator Himsl asked the secretary to be sure to put it into the minutes that there is no commitment made to change the classification of Flathead Lake - This would be done in direct conflict with the act. Mr. Willems said this section deals only with streams. Congress is considering new rules on this subject and will probably have them formulated this summer. When it was asked if this is another federal promotion plan for the State of Montana, the answer was negative. When Senator Watt asked Mr. Allen if the oil industry uses saline waters in wells, the answer was affirmative (in some cases) - however, Mr. Allen said, the saline water is never put back into fresh water. Mr. Willems said they have not found any damage to underground water due to the oil industry's injection system.

The hearing was concluded, due to the shortage of time before session began.

ADJOURNMENT: With no further business to be taken care of at this time, Chairman Stephens adjourned the meeting.

STAN STEPHENS, Chairman

E X H I B I T "C"

Department of Health and Environmental Sciences - January 17, 1977

COMMENTS TO PROPOSED WATER POLLUTION CONTROL ACT AMENDMENTS

Amendments to the Montana Water Pollution Control Act are being proposed for the following reasons:

Section 69-4802(5) -

The purpose of the proposed addition to the "pollution" definition is to assure that the Department and Board of Health and Environmental Sciences have the authority to control pollution originating not only from point sources but also from nonpoint sources.

Section 69-4806(3) -

This amendment is proposed to assure that any provision of a permit or stipulation, and not just a limitation imposed by a permit, is enforceable.

Section 69-4806(4) and (5) -

These additional sections assist in clarifying the scope of the Department's enforcement powers.

Section 69-4808.2(1)(c)(i) -

This section is no longer needed since revised standards have since been adopted by the Board of Health and Environmental Sciences.

Section 69-4808.2(1)(c)(ii) -

This proposed amendment corrects the existing law since it is now recognized that some of the initial water-use classifications were incorrect. As an example, many of the small streams in the eastern part of the State were incorrectly given a beneficial use classification indicating suitability for drinking purposes while "natural" conditions make the water unfit for domestic use.

Section 69-4808.2(1)(d) -

The duties enumerated in this section should be duties of the Department of Health and Environmental Sciences and not the Board.

Section 69-4808.2(2)(a) -

The discretionary duties conferred upon the Board in this section should also be duties of the Department.

Section 69-4809.1(1)(h) and Section 69-4809.1(2) -

The duties which were conferred upon the Board under Section 69-4808.2(1)(d) and Section 69-4808.2(2)(a) are transferred to the Department in these sections.

health care agency would have to go through certificate of need - they would then be referred to sub-area council. 4) HB663 was talked about - Mr. Fenner said HB360 was not needed for HB663, or vice versa.

Senator Watt moved adoption of Representative Cooney's 10 amendments - motion carried on voice vote.

Senator Rasmussen moved adoption of Hospital Association's amendment (see Exhibit "A") - motion failed (see roll call vote).

Senator Lee moved HB360, AS AMENDED, BE CONCURRED IN - Senator Watt seconded the motion - motion carried 6 yes, 1 no, 1 abstain. (Senator Lee will carry the bill on Senate floor.)

ACTION ON HOUSE BILL 487: A short discussion covered the following matters: 1) This bill is a copy of a bill in the State of Oregon; 2) Pharmacists will have a variety of ways to meet this bill's continuing educational requirements; 3) A pharmacist flunking open book examination would be subject to review; 5) 1979 effective date discussed; 6) Senator Olson said he has difficulty with this bill, in that it is going to do something HB286 also addresses, through language on page 6, line 4 where it gives power to pharmacists which currently rests with doctors.

By a voice vote, the Committee adopted the amendment proposed by the Montana Pharmaceutical Association (see Standing Committee Report).

Senator Rasmussen moved the bill AS AMENDED, BE CONCURRED IN - on a 4 - 4 tie, HB487 Reported Out of Committee WITHOUT RECOMMENDATION. (Senator Rasmussen will carry on Senate floor.)

ACTION ON HOUSE BILL 585: The Committee questioned Mona Jamison and Max Botz of Health and Environmental Sciences Department, as well as Montana Petroleum Association's Don Allen, and Montana Coal Council's Jim Mockler for their reasons behind their language preferences in certain sections of this bill. Jamison said in the water quality act, it already states that this chapter applies to drainage or seepage. The Department, however, for their own safety, feels that it would serve for clarification if the word, "introduction," were used in this bill. The Department feels the word, "discharge," in present statute is vague, and "introduction" would clarify what they need. She added the intent is to address reclassification of streams which have previously been mis-classified due to lack of data (this reclassification would be done after public hearings). If they found old data wrong, the Department, under this legislation, could go across the State reclassifying.

Max Botz said this bill is not to solve any problems with the oil industry but to address "diffuse" problems. He suggested the amendments (see Standing Committee Report).

Senator Roberts moved adoption of Mr. Botz' amendments - adopted by voice vote. He then moved HB585, AS AMENDED, BE CONCURRED IN - motion carried unanimously.

STANDING COMMITTEE REPORT

MARCH 25 19 77

MR. PRESIDENT

We, your committee on PUBLIC HEALTH, WELFARE AND SAFETY

having had under consideration HOUSE Bill No. 585

Respectfully report as follows: That HOUSE Bill No. 585

third reading bill, be amended as follows:

1. Amend page 2, Section 1, lines 17 and 18.
Following: "discharge"
Strike: "or introduction"
Insert: ", seepage, drainage, infiltration or flow"

2. Amend page 2, Section 1, line 23.
Following: "discharge"
Insert: ", seepage, drainage, infiltration or flow"

AND, AS SO AMENDED, BE CONCURRED IN.

~~DO PASS~~

BNL

STAN STEPHENS Chairman.

STATE PUB. CO.
Helena, Mont.

HOUSE BILL NO. 585

INTRODUCED BY VINCENT

BY REQUEST OF

THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING TITLE 69, CHAPTER 48; AMENDING THE DEFINITION OF POLLUTION; AUTHORIZING THE BOARD OF HEALTH AND ENVIRONMENTAL SCIENCES TO CHANGE A STREAM CLASSIFICATION WHEN A STREAM HAS BEEN IMPROPERLY CLASSIFIED; AUTHORIZING THE SERVICE OF COMPLIANCE ORDERS BY MAIL; AND AMENDING SECTIONS 69-4802, 69-4806, 69-4808.2, 69-4809.1, AND 69-4820.1, R.C.M. 1947."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 69-4802, R.C.M. 1947, is amended to read as follows:

"69-4802. Definitions. Unless the context requires otherwise in this chapter the following definitions apply:

(1) "Sewage" means water-carried waste products from residences, public buildings, institutions, or other buildings including discharge from human beings or animals together with ground water infiltration and surface water present.

(2) "Industrial waste" means any waste substance from the process of business or industry, or from the development

REFERENCE BILL

of any natural resource together with any sewage that may be present.

(3) "Other wastes" means garbage, municipal refuse, decayed wood, sawdust, shavings, bark, lime, sand, ashes, offal, night soil, oil, grease, tar, heat, chemicals, dead animals, sediment, wrecked or discarded equipment, radioactive materials, solid waste, and all other substances that may pollute state waters.

(4) "Contamination" means impairment of the quality of state waters by sewage, industrial wastes, or other wastes creating a hazard to human health.

(5) "Pollution" means contamination, or other alteration of the physical, chemical, or biological properties of any state waters, which exceeds that permitted by Montana water quality standards, including, but not limited to, standards relating to change in temperature, taste, color, turbidity, or odor; or the discharge ~~or introduction~~, SEEPAGE, DRAINAGE, INFILTRATION OR FLOW of any liquid, gaseous, solid, radioactive, or other substance into any state water which will or is likely to create a nuisance or render the waters harmful, detrimental, or injurious to public health, recreation, safety, welfare, livestock, wild animals, birds, fish, or other wildlife. A discharge, SEEPAGE, DRAINAGE, INFILTRATION OR FLOW which is authorized under the pollution discharge permit rules of the board is

not "pollution" under this chapter.

(6) "Sewerage system" means a device for collecting or conducting sewage, industrial wastes, or other wastes to an ultimate disposal point;

(7) "Treatment works" means works installed for treating or holding sewage, industrial wastes, or other wastes;

(8) "Disposal system" means a system for disposing of sewage, industrial, or other wastes, and includes sewerage systems and treatment works;

(9) "State waters" means any body of water, irrigation system, or drainage system either surface or underground; however, this subsection does not apply to irrigation waters where the waters are used up within the irrigation system and the waters are not returned to any other state waters;

(10) "Person" means the state, a political subdivision of the state, institution, firm, corporation, partnership, individual, or other entity;

(11) "Council" means the state water pollution control advisory council provided for in section 82A-607;

(12) "Board" means the board of health and environmental sciences, provided for in section 82A-605;

(13) "Department" means the department of health and environmental sciences, provided for in Title 82A, chapter 6;

(14) "Local department of health" means the staff, including health officers, employed by a county, city, city-county, or district board of health;

(15) "Point source" means any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or vessel or other floating craft, from which pollutants are or may be discharged;

(16) "Owner or operator" means any person who owns, leases, operates, controls or supervises a point source;

(17) "Standard of performance" means a standard adopted by the board for the control of the discharge of pollutants which reflects the greatest degree of effluent reduction achievable through application of the best available demonstrated control technology, processes, operating methods, or other alternatives, including, where practicable, a standard permitting no discharge of pollutants;

(18) "Effluent standard" means any restriction or prohibition on quantities, rates and concentrations of chemical, physical, biological and other constitutents which are discharged into state waters."

Section 2. Section 69-4806, R.C.M. 1947, is amended to read as follows:

"69-4806. Pollution unlawful -- permits. It is

unlawful to:

(1) cause pollution as defined in section 69-4802(5), R.C.M. 1947, of any state waters or to place or cause to be placed any wastes in a location where they are likely to cause pollution of any state waters;

(2) carry on any of the following activities without a current permit from the department:

(a) construct, modify, or operate a disposal system which discharges ~~to~~ into any state waters; ~~or~~

(b) construct or use any outlet for the discharge of sewage, industrial wastes, or other wastes ~~to~~ into any state waters; or

(c) discharge sewage, industrial wastes, or other wastes into any state waters; ~~or~~

(3) ~~violate any limitation imposed by a current permit~~ violate any provision set forth in a permit or stipulation, including but not limited to limitations and conditions contained therein;

(4) violate any order issued pursuant to this chapter; or

(5) violate any provision of this chapter."

Section 3. Section 69-4808.2, R.C.M. 1947, is amended to read as follows:

"69-4808.2. Duties of board. (1) The board shall:

(a) Establish and modify the classification of all

waters in accordance with their present and future most beneficial uses.

(b) Formulate standards of water purity and classification of water according to its most beneficial uses, giving consideration to the economics of waste treatment and prevention.

(c) Review from time to time, at intervals of not more than three (3) years, established classifications of waters and standards of water purity and classification, ~~and~~ as follows:

~~(i) The classifications, standards, and rules which have been adopted by the state water pollution control council under section 69-4813 are, without necessity of a hearing, initially adopted by the board.~~

~~(ii)~~(i) In revising classifications or standards or in adopting new classifications or standards the board may not so formulate standards of water purity or classify any state water as to lower any water quality standard applicable to any state water below the level applicable under the classifications and standards adopted ~~by the state water pollution control council under section 69-4813~~ except upon a finding that a particular state water has been classified under a standard or classification of water quality that is higher than the actual water quality that existed at the time of classification and only if the action is taken

pursuant to 69-4814.

~~(iii)~~(ii) The board shall require that any state waters, whose existing quality is higher than the established water quality standards, be maintained at that high quality unless it has been affirmatively demonstrated to the board that a change is justifiable as a result of necessary economic or social development and will not preclude present and anticipated use of these waters; and

~~(iv)~~(iii) The board shall require any industrial, public, or private project or development, which would constitute a new source of pollution or an increased source of pollution to high quality waters, referred to in subsection (1)(c)~~(iii)~~(ii), to provide the degree of waste treatment necessary to maintain that existing high water quality.

~~(d) Advise, consult, and co-operate with other states, other state and federal agencies, affected groups, political subdivisions, and industries in the formulation of a comprehensive plan to prevent and control pollution.~~

~~(e)~~(d) Adopt rules governing application for permits to discharge sewage, industrial wastes, or other wastes into state waters including rules requiring the filing of plans and specifications relating to the construction, modification, or operation of disposal systems.

~~(f)~~(e) Adopt rules governing the issuance, denial,

modification, or revocation of permits~~, and~~ as follows:

(i) The rules shall allow the issuance or continuance of a permit only if the department finds that operation consistent with the limitations of the permit will not result in pollution of any state waters, except that:

(ii) The rules may allow the issuance of a temporary permit under which pollution may result, if the department insures that such permit contains a compliance schedule designed to meet all applicable effluent standards and water quality standards in the shortest reasonable period of time.

(iii) The rules shall provide that the department may revoke a permit if the department finds that the holder of the permit has violated its terms, unless the department also finds that the violation was accidental and unforeseeable and that the holder of the permit corrected the condition resulting in the violation as soon as was reasonably possible; and

~~(g)~~(f) Hold hearings necessary for the proper administration of this chapter or, in the case of permit issuance hearings, delegate this function to the department.

~~(h)~~(g) Adopt rules for the administration of this chapter.

~~(i)~~(h) Adopt pretreatment standards for waste-water discharged into a municipal disposal system, adopt effluent standards as defined in section 69-4802 (18), adopt toxic

effluent standards and prohibitions, and establish standards of performance for new point source discharges.

(2) The board may:

(a) accept loans and grants from the federal government and other sources to carry out the provisions of this chapter; and

(b) establish minimum requirements for the treatment of wastes."

Section 4. Section 69-4809.1, R.C.M. 1947, is amended to read as follows:

"69-4809.1. Duties of department. (1) The department shall:

(a) Issue, suspend, revoke, modify, or deny permits to discharge sewage, industrial wastes, or other wastes to into state waters, consistently with rules made by the board;

(b) Examine plans and other information needed to determine whether a permit should be issued or suggest changes in plans as a condition to the issuance of a permit;

(c) Clearly specify in any permit any limitations imposed as to the volume, strength, and other significant characteristics of the waste to be discharged;

(d) Collect and furnish information relating to the prevention and control of water pollution;

(e) Conduct or encourage necessary research and demonstrations concerning water pollution;

(f) Issue orders to any person to clean up any material which he or his employee, agent, or subcontractor has accidentally or purposely dumped, spilled, or otherwise deposited in or near state waters and which may pollute them; ~~and~~

(g) Take such actions as are authorized or required under section 69-4820.1 to insure that the terms and conditions of issued permits are complied with and to insure that violations of this chapter are appropriately prosecuted; and

(h) Advise, consult, and cooperate with other states, other state and federal agencies, affected groups, political subdivisions, and industries in the formulation of a comprehensive plan to prevent and control pollution.

(2) The department may accept loans and grants from the federal government and other sources to carry out the provisions of this chapter."

Section 5. Section 69-4820.1, R.C.M. 1947, is amended to read as follows:

"69-4820.1. Additional enforcement remedies. (1) In addition to all other remedies created by this act, the department is authorized to take appropriate enforcement action on its own initiative to:

(a) prevent, abate, and control the pollution of state waters;

(b) prevent, abate, and control any violation of a condition or limitation imposed by a permit issued under section 69-4806, R.C.M. 1947; or

(c) prevent, abate, and control any violations of regulations relating to pretreatment standards.

(2) In furtherance of subsection (1) of this section, any person violating any condition, limitation, standard or other requirement established pursuant to this chapter may be served with a compliance order issued by the department. Such order must specify the condition, limitation, standard or other requirement violated and must set a time for compliance. However, in establishing a time for compliance, the department shall take into account the seriousness of the violation and any good faith efforts that have been made to comply with the condition, limitation, standard or other requirement that has been violated. The compliance order issued under this section shall be either personally served ~~by an authorized representative of the department~~ by a person qualified to perform service under the Montana rules of civil procedure or by certified mail.

(3) The department is authorized to commence a civil action seeking appropriate relief, including a permanent or temporary injunction, for any violation which would be subject to a compliance order under subsection (2) of this section. Any action under this subsection may be commenced

in the district court of any county in which the defendant is located or resides or is doing business, and the court shall have jurisdiction to restrain such violation and to require compliance.

(4) Any person found to be in violation of a condition, limitation, standard or other requirement established pursuant to this section shall be subject to the penalty provisions of section 69-4823, R.C.M. 1947.

(5) For the purpose of this subsection, the term "person" shall mean, in addition to the definition contained in section 69-4802, R.C.M. 1947, any responsible corporate officer."

-End-